

Honesty:
The Essential Component of A Healthy Attorney/Client
Relationship

Recently, a client I represented in a divorce case let me go. It wasn't the first time a client has fired me and probably won't be the last – better lawyers than me have been fired by better clients over the years, so don't cry for me. It's just part of the game.

Usually, when a termination of attorney services occurs, it's for one of three reasons:

- 1) Client and attorney had different ideas on how the litigation should be prosecuted. This could include differences over strategy, client's unethical behavior, or whether client insists attorney take action that is duplicative, pointless, or otherwise immaterial to the ultimate outcome.
- 2) Client has unreal perceptions about the legal system in general such that they expect the legal system to be lightning-quick or their lawyer to be a great believer in histrionics. Usually this is fed by client having seen too much television.
- 3) Client has unmet expectations. Usually, the attorney can be blamed for unmet expectations, especially when he failed to manage the client in such a way that the client has a realistic view of the probable outcome of the case. In other words, unmet expectations result when attorney promises that which cannot be delivered. Just as frequently the problem stems from client's friends and family members who offer client 'advice' based on their own past run-ins with the legal system in what are usually completely dissimilar, and unrelatable, cases.

While these are probably the most usual way representation terminates, there are obviously other ways things end, so it's not surprising that the termination in the given case doesn't fit one of these three examples. And that the relationship ended for dishonesty is also not surprising – it's another of the big reasons these things end. What *is* surprising is that this might be the first time in history where the deception of the *client* was the reason the *client* ultimately let the attorney go.

What Happened?

Representation of this client began in the usual way. She phoned my office, had a consult over the phone about a standard divorce, where there was a child but little property. After talking through the facts of the case, she made an appointment. At the appointment we discussed the case further, including what she reasonably wanted from a child custody and parenting time standpoint. During this meeting I had the impression that while she had some animosity and distrust for her husband – hence, the divorce – she ultimately did not seem to think him such a bad father that she would not agree to a 50/50 split on custody, or something that approached it. Pressed on this issue, she would give no concrete reasons why there would not be a reasonable expectation that, if he asked for a 50/50 split of child custody, that the court would grant it.

Operating with the information given to me by client, I drafted a motion seeking primary physical custody of the child, but ultimately conceding that liberal parenting time was in the best interest of the parties. This motion, in essence, tried to bridge the gap between what she said she'd accept, and what she seemed to want. At all steps along the way, client was involved in drafting this motion and had firsthand knowledge of the language within it.

Unbeknownst to me, client entered direct negotiations with her husband on the matter over one weekend and by the end of that weekend sent me an email outlining the parenting time agreement they'd fashioned on their own. In essence, they agreed to split the child 50/50. Immediately I abandoned any further work on my draft of the motion and instead drafted an order codifying the custody and parenting time agreement they'd come to. After it was circulated to, and signed by, the parties, it was entered by the court.

And here is where the problem began.

Mere days after signing the order I received frantic emails and phone calls from the client saying she'd had a change of heart and, moreover, now she wanted to deprive her husband of practically all parenting time. Her reasons for this? She related non-specific allegations of physical and sexual abuse at his hands. Pressed for details, she would not give them. Nevertheless, she stated these abuses preexisted the signing of the order, which she signed by consent.

Faced with these revelations, I informed the client that there was a problem. While it was true that orders made inside the divorce were temporary and therefore easier to change whilst still inside the divorce, when the court had to make changes

to orders they always looked primarily to those incidents that occurred since the entry of the last order and since her allegations didn't occur since the last order, she would find the court resistant to accepting them. This was her first problem.

Her second problem was that, even should the court be interested in events that predated the order, the obvious inquiry would be this: if those events are so important now, why did the client ever sign a consent order in the first place? It's not an impossible question to answer, but difficult and at all times, the client runs the risk of sounding crazy when they answer.

The sad conclusion I had to give to the client? I'll draft the motion, but don't expect good news.

Unhappy with me, the client terminated representation.

Did it have to be this way?

No. The plain fact is that as an attorney, I pursue my clients goals, based upon information given to me by my client. Without knowing of these allegations of physical and sexual abuse I obviously pursued one course of action that I otherwise would not have if I'd known about them previously. Indeed, I ultimately would have done my best to talk her out of the negotiated agreement she entered into with her husband and, failing that, would have forced her to acknowledge in writing that I offered my advice and she ignored it.

But because she'd withheld pertinent information, once the consent order was signed, it was too late.

What could have saved her from this difficult situation was simply to be honest and forthright with me at the start. Throughout my relationship with any client, I am always open and honest at every step of the process, even with a client such as this, who was skeptical and second-guessed every piece of advice and less-than-favorable news. Part of the problem for this client was she spent far too much time soliciting the advice of her friends who'd been divorced on how her own divorce should proceed, ignoring that they were factually dissimilar and could not be easily equated with one another.

The real problem was that because she was not honest and forthright with me, even when pressed for it, she'd essentially boxed herself in and faced with the fact that her own dishonesty had deceived her she took the only logical recourse and fired her attorney.

Don't Feel Sorry For Me

Don't feel sorry for me because the reality was, I was relieved to be fired. When the client first revealed her deceptions to me, and was not specific in how she relayed them, even as I pressed her to be, I struggled with how to properly represent her. I did not know for a fact the client's allegations were false, but given she'd hidden them from me, I had reason to believe they might be false and because I couldn't trust her to be completely honest with me, it made me question every other thing she ever said to me. Obviously, this is not a good position for the client, to be represented by somebody who thinks they're a liar.

As I said, in the end I was relieved to be fired simple because it saved me from any ethical quandaries.

Key Points to Remember

Clearly, there are several important things to take away from this situation and how it relates to honesty in the attorney/client relationship.

- 1) Litigation is driven by knowledge. As an attorney I can only prosecute the case based upon what I know and even if it is embarrassing, it still needs to be disclosed to me in order to achieve a positive outcome for the client.
- 2) Complete honesty is more important than a client's embarrassment. Given that this client's case was impacted by her dishonesty, and given that it will likely drive the rest of her litigation into an area she doesn't like, ultimately the question is whether it's better to achieve your specific goals or to save your embarrassment? In many cases you can have both, but in others, you cannot. It is always better to err on the side of caution and simply reveal the embarrassing details to your attorney because ultimately he's bound to keep your secrets and he needs to know them anyway to effectively represent you.
- 3) Lying to an attorney is never a good position to put the attorney in. As a client you want a favorable outcome. As an attorney, I want a favorable outcome for you. However, once a lie or dishonesty is revealed, I have to wonder what else you've been dishonest about and it affects how I represent you, not from a strategic standpoint, but from a zealous standpoint. The last thing you want as a client is to have to sit in court

next to somebody and wonder if they are working as hard as they can for you or not, because you're dishonest.

Conclusion

The simple conclusion is that, no matter what it is, no matter how embarrassing it may be, if you want your attorney to effectively represent you, you will have to be forthcoming with all pertinent information. Should you not be, you should not be surprised when litigation does not proceed as you like and ultimately you have an outcome you are unhappy with.